

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

SHANE C. BUCZEK,

Petitioner

10-CV-384-S

v.

CONSTRUCTIVE STATUTORY TRUST
DEPOSITORY TRUST CORPORATION
DONALD F. DONAHUE
UNITED STATES MARSHALS
JOHN CLARK and BRYAN MATTEWS
UNITED STATES PROBATION
JOSEPH GIACOBBE
UNITED STATES OF AMERICA
ERIC H. HOLDER
BEHAVIORAL INTERVENTIONS
B.I. WILLIAM COOPER CFO,

Respondents.

**MOTION TO DISMISS THE PETITION FOR A
WRIT OF HABEAS CORPUS AND THE AMENDED
PETITION FOR A WRIT OF HABEAS CORPUS**

THE DEPOSITORY TRUST COMPANY [improperly named “**The Depository Trust Corporation**” by petitioner] **AND DONALD F. DONAHUE (THE “DTC RESPONDENTS”)**, by and through their attorneys, Proskauer Rose LLP, will move this Court at the United States Courthouse, 68 Court Street, Buffalo, New York 14202, Part IV, at a time to be determined by the Court, for an order and judgment:

- (1) pursuant to 28 U.S.C. § 2243 dismissing the Petition for a Writ of Habeas Corpus (Docket No. 1) and the Amended Petition for a Writ of Habeas Corpus (Docket No. 2) (collectively, the “Petition”) against the DTC Respondents on the grounds that the DTC Respondents do not

exercise any custodial authority over petitioner and are not properly joined as respondents in this habeas proceeding.

- (2) pursuant to Rules 8(e) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Petition against the DTC Respondents on the grounds that the Petition fails to state a claim upon which relief can be granted because petitioner fails to allege any facts to support the naming of the DTC Respondents as parties to the Petition.

In submitting this Motion, the DTC Respondents respectfully rely on and incorporate by reference the Amended Motion to Dismiss filed by The United States Marshal Service, John Clark, Director of The U.S. Marshal Service and Bryan Matthews, Acting U.S. Marshal for The Western District of New York, The United States Office of Probation and Pretrial Services, The United States of America and Eric H. Holder, Attorney General of The United States (Docket No. 11).

For further grounds upon which this Motion is based, the DTC Respondents also incorporate by reference their accompanying Memorandum of Law. The DTC Respondents respectfully submit that oral argument is not necessary on this Motion.

DATED: New York, New York, November 18, 2010

Respectfully submitted,

PROSKAUER ROSE LLP

/s/Margaret A. Dale

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Trust Company and Donald F. Donahue*

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2010, I electronically filed the attached MOTION TO DISMISS THE PETITION FOR A WRIT OF HABEAS CORPUS AND THE AMENDED PETITION FOR A WRIT OF HABEAS CORPUS with the Clerk of the District Court using its CM/ECF system, and I mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participant:

Shane C. Buczek
Northeast Ohio Correctional Center,
2240 Hubbard Rd.
Youngstown, OH 44501

/s/Margaret A. Dale
MARGARET A. DALE